

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint of)	
MICHIGAN PAY TELEPHONE ASSOCIATION)	Case No. U-11756
<i>et al.</i> , against AMERITECH MICHIGAN and)	(After Remand)
GTE NORTH INCORPORATED.)	
_____)	

At the March 6, 2014 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER ON PETITION FOR REHEARING

The proceedings associated with this case originate from the federal Telecommunications Act of 1996 (FTA), 47 USC 276, and the Federal Communications Commission's (FCC's) rules and orders implementing the relevant provisions of the FTA as it pertains to the rates for network services made available to independent payphone providers (IPPs).

Beginning in 1996, the FCC issued several orders to implement the relevant provisions of the FTA. On May 19, 1997, AT&T Michigan¹ (AT&T) filed tariffs and supporting data setting forth new rates for network services made available to IPPs. On May 20, 1997, the Michigan Pay Telephone Association (MPTA) filed a petition with the Commission to investigate AT&T's

¹ The history of the various mergers and acquisitions among Michigan local exchange carriers since 1996 is well documented in this docket and shall not be repeated in this order.

compliance with the Michigan Telecommunications Act (MTA) and the Payphone Orders,² which was denied.

Following lengthy and contentious litigation in state court and with the FCC, the Commission found, in its December 6, 2013 order (December 6 order) in this case, that AT&T's overhead allocation for toll service was not cost-based and that AT&T had not met its burden to properly justify the use of toll service as a comparable service, and ultimately was not in compliance with the FCC's new services test (NST).

The Commission further found that the new local usage rate of \$0.0190176 per message to each IPP was NST compliant and lower than those previously charged by AT&T. The Commission determined that the difference between the new effective local usage rates and those previously charged by AT&T should be refunded to each IPP beginning April 15, 1997, and continuing until AT&T ceased payphone service in Michigan. The Commission ordered AT&T to file a report detailing the date it ceased payphone service in Michigan and the amount by which its local usage rate exceeded the ceiling to each provider calculated pursuant to the NST. The MPTA had 15 days to object to AT&T's refund report.

Motion for Clarification and Petition for Rehearing

On January 6, 2014, the MPTA filed a motion for clarification, or in the alternative, petition for rehearing. The MPTA requests that the Commission alleviate any confusion and clarify: (1) whether IPPs are entitled to interest on refunds; and (2) whether the Commission meant to refund to each IPP or only to IPPs named in the complaint. On January 27, 2014, AT&T and the Commission Staff (Staff) filed responses to MPTA's motion.

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996); Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996) *aff'd in part and remanded in part*, *Illinois Pub. Telecomms. Assn v FCC*, 117 F 3d 555 (CA DC 1997).

The Staff agrees that clarification is appropriate and recommends that the Commission find that interest is a component of the refund. The Staff suggests that the methodology for calculating the interest amount should be addressed during mediation of the refund obligation. The Staff also agrees with the MPTA that the refund should apply to each IPP and not be limited to those named in the complaint.

AT&T disagrees with the positions of the MPTA and the Staff. AT&T contends that interest on the refunds is not required and is inappropriate in this case. AT&T argues that it did not knowingly charge an illegal rate, as the MPTA suggests, and that it should not be penalized for charging rates previously approved by the Commission.

AT&T also argues that providing refunds to non-parties to this proceeding lacks statutory or constitutional authority. AT&T argues that *Bolt v City of Lansing*, 238 Mich App 37; 604 NW2d 745 (1999), limits its refund obligation to only an IPP named in the complaint. In that case, the Michigan Court of Appeals dealt with the issue of whether a prevailing party may obtain monetary relief for persons not named as plaintiffs in the lawsuit. The Court found no provision in the implementing statutes that would permit such a result. Likewise, AT&T argues, there is no provision in the MTA that would permit the extension of benefits to others not a party to this case. AT&T points to the Commission's February 10, 2005 order (February 10 order) where the Commission determined that only named member-complainants were entitled to the refunds at issue.

Discussion

Rule 403 of the Commission's Rules of Practice and Procedure, R 460.17403, provides that an application for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance

with the order. An application for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

The Commission agrees with the MPTA and the Staff that rehearing should be granted to clarify the December 6 order. Regarding interest on refunds, the Commission is authorized to "order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result" of a violation of the MTA. MCL 484.2601. Furthermore, in its March 16, 2004 order, the Commission required AT&T to include interest in its refund calculation for charges in excess of non-NST compliant rates. The Commission finds that interest should be included as a component of AT&T's refund obligation to make whole those IPPs overcharged with excessive rates. The Commission further agrees with the Staff and finds that the methodology for calculating the requisite interest should be determined during the mediation process ordered for disputed issues related to AT&T's 2014 Refund Report as provided in a separate order issued concurrently with this one.

With regard to the parties entitled to refunds, the Commission finds that the *Bolt* decision does not limit its ability to provide refunds to all IPPs that were overcharged. As provided previously, MCL 484.2601 authorizes the Commission to "order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result" of a violation of the MTA. Thus, the statutory scheme of the MTA authorizes the Commission to make an IPP whole as a result of a violation of the MTA by ordering refunds. The Commission, in its December 6 order, found that AT&T's rates to IPPs were non-NST compliant and in violation of the MTA.

The Commission is mindful, however, that it previously limited refunds on similar overcharges by AT&T to only those IPPs named in the complaint. In its February 10 order, p.10, the Commission found that “to the extent the rates violated the NST, [AT&T] must issue refunds to affected customers. The only customers specifically at issue in this case are those 62 named member-complainants.” In that order, the Commission found it appropriate to provide refunds to only named complainants. Whether it is appropriate to limit refunds to named member-complainants in this instance is a disputed issue that relates to AT&T’s total refund obligation amount. The Commission therefore finds that the issue should be negotiated during mediation.

THEREFORE, IT IS ORDERED that:

A. The Michigan Pay Telephone Association’s petition for rehearing is granted to clarify the Commission’s December 6, 2013 order to include interest as part of AT&T Michigan’s total refund obligation amount.

B. The methodology for calculating the interest obligation and whether refunds should be limited to named-member complainants should be negotiated during the mediation process as provided in the order issued concurrently to this one.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Greg R. White, Commissioner

Sally A. Talberg, Commissioner

By its action of March 6, 2014.

Mary Jo Kunkle, Executive Secretary

In the matter of the complaint of)
MICHIGAN PAY TELEPHONE ASSOCIATION)
et al., against **AMERITECH MICHIGAN** and)
GTE NORTH INCORPORATED.)
_____)

Case No. U-11756
(After Remand)

Suggested Minute:

Case No. U-11756 involves an order from the Federal Communications Commission remanding the proceeding to address certain rates local exchange carriers charged to independent payphone providers. The order before you grants the Michigan Pay Telephone Association's petition for rehearing to clarify that AT&T Michigan's refund obligation, as determined in the Commission's December 6, 2013 order, includes interest.